

C.P. Vijayakumar Vs. V.P. Moosa and ors.

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Court : Kerala

Decided On : Mar-04-1980

Reported in : AIR1981Ker31

Judge : V. Balakrishna Eradi, C.J. and; G. Balagangadharan Nair, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Appeal Nos. 66 and 67 of 1980

Appellant : C.P. Vijayakumar

Respondent : V.P. Moosa and ors.

Advocate for Def. : K.P. Dandapani,; M.M. Cherian, Advs. and;Govt. Pleader

Advocate for Pet/Ap. : A. Innees and; V. Sivaraman Nair, Advs.

Disposition : Appeals allowed

Judgement :

Balakrishna Eradi, C.J.

1. These two writ appeals arise out of a common judgment rendered by a learned single Judge of this Court in two connected writ petitions O. P. No. 364 of 1980 and O. P. No. 417 of 1980 -- in both of which the prayer was for quashing the judgment rendered by the State Transport Appellate Tribunal dated 17-1-1980 in M. V. A. A. 263 of 1979. The learned single Judge set aside that judgment to the extent to which it granted a permit to the 1st respondent in O. P. No. 364 of 1980 and directed the State Transport Appellate Tribunal to consider afresh the question regarding the granting of a pucca permit in the place of the permit granted to the 7th respondent, which had not been availed of by the grantee, in accordance with law and in the light of the observations contained in the judgment of this Court. W. A. No. 66 of 1980 arises out of O. P. No. 364 of 1980 and the 1st respondent in the writ petition is the appellant. W. A. No. 67 of 1980 arises out of O. P. No. 417 of 1980 and the appellant before us is the 4th respondent in that writ petition.

2. On 3-12-1974 the Regional Transport Authority, Ernakulam published a notification inviting applications for the grant of three pucca stage carriage permits on the route Alwaya-Fort Cochin. It is common ground that it is a short route and, ordinarily, new entrants are to be preferred for the grant of the permit. After following the procedure laid down in Section 57 of the M. V. Act, the Regional Transport Authority by order dated 21-12-1976 granted one permit to Applicant No. 3 (appellant in W. A. No. 66 of 1980) and the remaining two permits to two others. Two of the disappointed applicants filed appeals before the State Transport Appellate Tribunal contending that they had not been given any notice or hearing before the Regional Transport Authority took its final decision in the matter and hence the proceedings of the Regional Transport Authority were illegal and violative of the principles of natural justice. The said contention was upheld by the State Transport Appellate .

Tribunal by its judgment dated 11th November, 1977 and the State Transport Appellate Tribunal set aside the order of the Regional Transport Authority and remanded the matter to the Regional Transport Authority for fresh disposal. It would appear that an operator by name Sadenanda Shenoji had filed a suo motu 'application for the grant of a stage carriage permit on the same route and that application' had been rejected by the Regional Transport Authority on the ground that there was no vacancy. Against the said rejection of his application, Sri Shenoji had filed an appeal before the State Transport Appellate Tribunal. That appeal was allowed by the State Transport Appellate Tribunal probably in view of its having set aside the grant made by the Regional Transport Authority as per its order dated 21-12-1976 and the suo motu application filed by Sri Shenoji was also remanded to the Regional Transport Authority for fresh disposal. Thereafter, acting in pursuance of the two orders of remand, the Regional Transport Authority clubbed together all the applications and considered them together at its sitting held on 21-6-1979. After an evaluation of the relative merits of the applicants the 'Regional Transport Authority decided to grant one permit each to respondents Nos. 5 to 7 in the two writ petitions. The application of the appellant in W. A. No. 66 of 1980 was rejected on the ground that the vehicle which he had offered in his application as being available for being put on the route was no longer available, since a pucca permit on another route had already been granted by the Regional Transport Authority in respect thereof and the resultant position was that the appellant did not have a ready vehicle. The appellant thereupon filed an appeal (M. V. A. A. 263 of 1979) before the State Transport Appellate Tribunal. Pending that appeal the State Transport Appellate Tribunal granted a stay of implementation of the decision of the Regional Transport Authority sanctioning the grant of pucca permits to respondents 5 to 7 in the Original Petitions. In view of the said order of stay, the Regional Transport Authority granted three temporary permits in favour of respondents Nos. 5 to 7 for operating the service, pending disposal of the appeal. The 7th respondent however subsequently sold his vehicle and committed default of the temporary service. In the light of the said development the Regional Transport Authority by notice dated 13-9-1979 invited applications for the grant of a temporary permit in the place of K. R. E. 2637 -in respect of which the 7th respondent had previously been granted a temporary permit over the route, The writ petitioner in O. P. No. 364 of 1980 applied in response to the said notice for the grant of the temporary permit and the said application was allowed by the Regional Transport Authority and the writ petitioner was granted a temporary permit over the route for the period 3-11-1979 to 2-3-1980 or till a pucca permit was issued over the route, whichever was earlier. Exhibit P-4 is a copy of the temporary permit so granted to the writ petitioner in O. P. No. 364 of 1980.

3. The petitioner in O. P. No. 417 of 1980 is an operator who had filed a suo motu application before the Regional Transport Authority for the grant of a pucca permit over the same route. His application was however rejected by the Regional Transport Authority and that order was allowed to become final, since no appeal was filed therefrom. When the State Transport Appellate Tribunal allowed the appeal filed by the 7th respondent against the rejection of his suo motu application and remanded the application of the 7th respondent for fresh disposal to the Regional Transport Authority, the writ petitioner in O. P. No. 417 of 1980 appears to have suddenly woken up and at the time when the Regional Transport Authority took up the matter for fresh consideration on 21-6-1979 the writ petitioner in O. P. No. 417 of 1980 filed objections before the Regional Transport Authority contending that the suo motu application of the 7th respondent should not be considered jointly along with the other applications filed in response to a notification issued by the Regional Transport Authority under Section 57(2) of the Act. The said contention put forward by the petitioner in O. P. No, 417 of 1980 was rejected by the Regional Transport Authority and, as already noticed, the Regional Transport Authority by his order evidenced by Ext. P-1 dated 21-6-1979 granted one permit to the 7th respondent. The petitioner to O. P. No. 417 of 1980 thereupon filed a revision before the State Transport Appellate Tribunal complaining against the overruling of the objections raised, by the Regional Transport Authority. That revision petition was rejected by the State Transport Appellate Tribunal as per its order dated 17-1-1980, a copy of which has been produced and marked as Ext. P-4 in O. P. No. 417 of 1980. It is under the guise of challenging the said order rejecting his revision petition that O. P. No. 417 of 1980 has been filed in this Court by the writ petitioner therein.

4. One of the principal grounds urged by respondents before the learned single Judge was that the petitioners had no locus standi whatever to raise any challenge against the decision rendered by the State Transport Appellate Tribunal as per its judgment Ext. P-5 dated 17-1-1980. The learned single Judge took the view that since the writ petitioner in O. P. No. 364 of 1980 was operating a service on the route Alwaye-Fort Cochin on the strength of a temporary permit issued to him as per Ext. P-4 dated 3-11-1978 and his right to conduct the service on the basis of that permit is affected by the impugned decision rendered by the State Transport Appellate Tribunal, it could not be said that the petitioner had no locus standi to challenge the order Ext. P-5. With respect to the writ petitioner in O. P. No. 417 of 1980 the learned single Judge expressed very serious doubts about his competence to maintain the writ petition, but did not finally pronounce upon the matter in view of the conclusion reached by him in O. P. No. 364 of 1980 that the judgment of the State Transport Appellate Tribunal had to be set aside and a limited remand of the case had to be made to the appellate tribunal. In this appeal counsel for the appellants strongly urged before us that the view taken by the learned single Judge on the question of locus standi of the writ petitioner in O. P. 364 of 1980 to maintain that writ petition is not correct or tenable. After hearing both sides and giving the matter our anxious consideration, we have come to the conclusion that the said contention has to be upheld. As pointed out by the Supreme Court in *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal*, (AIR 1962 SC 1044) it is implicit in the exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution that the relief asked for must be one to enforce a legal right and the existence of such legal right forms the foundation of the exercise of such jurisdiction by the High Court. The same principle has been reiterated by the Supreme Court in *C. K. Achutan v. The State of Kerala*, (AIR 1959 SC 490), *State of Assam v. Ajit Kumar Sharma*, (AIR 1965 SC 1196) and *G. J. Fernandez v. The State of Mysore*, (AIR 1967 SC 1753). Hence a writ petition challenging a decision, order or proceeding can be maintained only by a person if he is one legally aggrieved by such decision, order or proceeding. Judged by the said test we are unable to see how the writ petitioner in O. P. No. 364 of 1980 can be said to be legally aggrieved by the decision of the State Transport Appellate Tribunal evidenced by Exhibit P-5 dated 17-1-1980. The writ petitioner was admittedly not one of the applicants for the grant of the permits before the Regional Transport Authority. He has also not figured as an objector in the proceedings before the Regional Transport Authority. Hence, he cannot be regarded as a person interested in the matter relating to the grant of the three pucca permits over the route in question. He entered the scene only during the pendency of the appeals filed before the State Transport Appellate Tribunal by some of the disappointed applicants. In view of the order of stay issued by the State Transport Appellate Tribunal, the Regional Transport Authority had granted three temporary permits to respondents Nos. 5 to 7 to operate service on the route during the period of pendency of the appeals. One of the grantees having sold away his vehicle (respondent No. 7) and committed default in the operation of the temporary service, the Regional Transport Authority invited applications for the grant of a temporary permit which would expressly be limited in its duration for a period of three months or until a pucca permit was granted consequent on the decision to be rendered by the State Transport Appellate Tribunal whichever was earlier. The writ petitioner applied in response to that invitation and he was granted a temporary permit evidenced by Ext. P-4, which was only for the period from 3-11-1979 to 2-3-1980 or till the issuance of the pucca permit whichever was earlier. No right that accrued to the petitioner under Ext. P-4 can be said to have in any way been affected by the judgment Ext. P-5 rendered by the State Transport Appellate Tribunal. Apart from the fact that the duration of the petitioner's permit was to ensure only till 2-3-1980 at the latest, it was also liable to defeasance immediately on the grant of a pucca permit consequent on the decision of the State Transport Appellate Tribunal irrespective of the merits of such grant made by the appellate or regional authority. Such being the position, with respect, we do not find it possible to agree with the view taken by the learned single Judge that the petitioner in O. P. No. 364 of 1980 had locus standi to maintain the writ petition challenging the order Ext. P-5. In our opinion, the writ petition was liable to be dismissed on the sole ground that the petitioner had no locus standi to maintain it.

5. The position of the writ petitioner in O. P. No. 417 of 1980 is not in any way better. He too was not an applicant for the grant of a permit before the Regional Transport Authority. Nor did he figure as an objector at the time of the original grant. Though he had filed a suo motu application for the grant of a permit over the

route, that application had been rejected by the Regional Transport Authority and the said order had become final. Thereafter he had no right whatever to intervene at the stage of fresh consideration by the Regional Transport Authority of the applications received in response to the notice published under Section 57(3) on the basis of the orders of remand passed by the State Transport Appellate Tribunal and the objection raised at that stage by the writ petitioner in O. P. No. 417 of 1980 against the consideration of the suo motu application filed by the 7th respondent was rightly overruled by the Regional Transport Authority. The revision petition filed by the petitioner before the State Transport Appellate Tribunal challenging the said order passed by the Regional Transport Authority was wholly devoid of any merit and its said rejection by the State Transport Appellate Tribunal was therefore perfectly correct and proper. Thus there is absolutely no merit in the contentions raised by the writ petitioner in O. P. No. 417 of 1980 against the order Ext. P-4 passed by the State Transport Appellate Tribunal rejecting his revision petition. Though this writ petitioner has also raised a challenge against Ext. P-5 order, for the very same reasons stated by us while dealing with the question of locus standi in O. P. No. 364 of 1980, it must be held that this writ petitioner has also no competence whatever to call in question the correctness of the judgment rendered by the State Transport Appellate Tribunal.

6. In the result, we allow these two writ appeals, set aside the judgment of the learned single Judge and dismiss O. P. Nos. 364 of 1980 and 417 of 1980. The parties will bear their respective costs.

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